

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION

MELVIN L. JEFFERSON,
ADC #090532

PETITIONER

v.

No. 5:14-cv-414-DPM

WENDY KELLEY,* Director,
Arkansas Department of Correction

RESPONDENT

ORDER

On *de novo* review, the Court adopts the recommendation, *No. 11*, as supplemented and overrules Jefferson's objections, *No. 12*. FED. R. CIV. P. 72(b)(3).

Jefferson's petition is time barred; and he hasn't shown the diligence or extraordinary circumstances necessary to warrant equitable tolling. *Holland v. Florida*, 560 U.S. 631, 649, 653–54 (2010). For example, even if Jefferson's *habeas* clock were tolled while he was being represented by allegedly ineffective counsel, he says counsel only represented him until 2010. *No. 2 at 14*. He offers no rare or extraordinary facts that prevented him from filing his petition for another four years. Further, while Jefferson's attempt to read

*The Court directs the Clerk to amend the docket to reflect the current Director of the Arkansas Department of Correction, Wendy Kelley. FED. R. CIV. P. 25(d).

Martinez and Holland together is creative, it is unavailing. Magistrate Judge Kearney is right; *Martinez* applies to procedurally defaulted claims, not untimely ones. *Martinez v. Ryan*, 132 S. Ct. 1309 (2012); *No 11 at 5*.

Jefferson's petition, *No 2*, will be dismissed with prejudice. No certificate of appealability will issue. 28 U.S.C. § 2253(c)(1)–(2).

So Ordered.

D.P. Marshall Jr.
D.P. Marshall Jr.
United States District Judge

29 January 2016